

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR - LEGAL UNIT



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August 27, 2001

David Kersh
Carpenters/Contractors Cooperation Committee
5200 South Virgil Avenue, Suite 201
Los Angeles, CA 90020

Re: Public Works Case No. 2001-081
Tenant Improvements to Bus Parking and Service Facility
Los Angeles Unified School District/RBE Roscoe Woodley Phase
II Lease

Dear Mr. Kersh:

This letter constitutes the determination of the Director of the Department of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based upon my review of the documents submitted and an analysis of the relevant facts and the applicable law, I have determined that the tenant improvements to 16250 Roscoe Boulevard and 8257 Woodley Avenue ("the Premises") in the City of Van Nuys, County of Los Angeles, is a public work subject to the payment of prevailing wages.

This case involves a Lease Agreement ("Lease") between RBE Roscoe Woodley Phase II, LLC ("Landlord") and the Los Angeles Unified School District ("Tenant") that was executed on September 29, 1999. Under the Lease, Tenant will rent for its exclusive use the Premises from Landlord for the operation of a bus parking and service facility as well as for certain ancillary uses (office, classroom, service bays, bus driver lounge, service bay break room, restrooms and kitchen facilities).

The Lease requires Landlord to construct tenant improvements prior to Tenant's occupation of the Premises. The tenant improvements include, without limitation, (1) paving and striping of parking areas; (2) enclosure of the perimeter of the Premises with walls and fencing; (3) the provision of ingress/egress at three points and the erection of manual, rolling wrought iron gates at two of the points; (4) the installation of security lighting and perimeter security systems; (5) the construction of an approximately ten thousand (10,000) square-foot building with various internal rooms; and (6) the construction of four service bays, with various internal rooms.

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The Lease calls for a monthly base rent of \$98,126 with adjustments on each five (5) year anniversary of the commencement date of the Lease, and a \$1,177,512 security deposit from Tenant. The Lease provides for its execution prior to construction of the tenant improvements. The Lease was, in fact, so executed.

Tenant has represented that the construction contract is between private parties. In fact, the Lease provides that Landlord is to contract with EPI Construction or an alternate licensed, reasonably experienced general contractor to construct the tenant improvements. Tenant has substantial control over and oversight of the construction, including approval of the construction budget and the plans, specifications and drawings.

The Lease also provides for Tenant to be entitled to a one-time Tenant Improvement Allowance in the amount of \$2,500,000. The Tenant Improvement Allowance is to be disbursed for costs related to the design, engineering, permitting, financing and construction of the tenant improvements, inclusive of fees and costs of architects and engineers in the preparation of the construction drawings, permit costs, the costs of financing and construction of the tenant improvements and the costs of the materials for and construction of the tenant improvements (including fees and costs of the contractor, construction managers and subcontractors). Also under the Lease, should the tenant improvements exceed the \$2,500,000, Tenant must reimburse Landlord for the excess costs ("Additional Tenant Improvement Allowance") as additional rent amortized over the remaining term of the lease. The Tenant will also absorb as rent any additional costs, including any unabated taxes.

Labor Code section¹ 1720.2 states:

For the limited purposes of Article 2 (commencing with section 1770) of this chapter, "public works" also means any construction work done under private contract when all of the following conditions exist:

- (a) The construction contract is between private persons.
- (b) The property subject to the construction contract is privately owned, but upon completion of the construction work, more than 50 percent of the assignable square

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¹ Hereinafter, all statutory references are to the Labor Code.

feet of the property is leased to the state or a political subdivision for its use.

(c) Either of the following conditions exist:

- (1) The lease agreement between the lessor and the state or political subdivision, as lessee, was entered into prior to the construction contract.
- (2) The construction work is performed according to plans, specifications or criteria furnished by the state or political subdivision, and the lease agreement between the lessor and the state or political subdivision, as lessee, is entered into during or upon completion of the construction.

Labor Code section 1720(a) defines public work to mean "Construction, alteration, demolition or repair work performed under contract and paid for in whole or in part out of public funds."

With regard to section 1720.2, both the representation of Tenant and the Lease indicate that the construction contract is between private persons. Landlord, a private entity, owns the Premises and, upon completion of the tenant improvements, 100 percent of the assignable square feet of Premises are leased to Tenant, a political subdivision. Finally, the Lease, which by its terms anticipates the construction contract, was entered into prior to the construction. For these reasons, the construction of the tenant improvements is a public work under section 1720.2.

Under certain circumstances, the construction of the tenant improvements may also be a public work under section 1720(a). The work is construction done under a contract between Landlord and a contractor.² In addition, Section 1(c) of Exhibit C to the Lease provides that Tenant shall repay Landlord for any Additional Tenant Improvement Allowance. Should Tenant reimburse Landlord for any additional costs over the Initial Tenant Improvement Allowance, public funds will have been spent on the construction, and the tenant improvements will also constitute a public work under section 1720(a).

² There is no requirement in section 1720(a) that the contract be between a public entity and a private entity. See, Public Works Determination No. 98-005, Goleta Amtrak Station, November 23, 1998.

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I hope this determination letter satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script, reading "Stephen J. Smith". The signature is written in dark ink and is positioned above the printed name and title.

Stephen J. Smith
Director